

## REMARKS/ARGUMENTS

In the Office Action mailed July 29, 2010, claims 1 – 12 and 17 – 23 were rejected. In response, Applicants have amended claims 1 and 7 and canceled claims 4, 10, and 18 – 23. Applicants hereby request reconsideration of the application in view of the amended claims and the below-provided remarks.

### Claim Rejections under 35 U.S.C. 112

Claims 1, 7, and 18 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Office action states that use of the term “item” is confusing. Applicants have amended claims 1 and 7 to particularly point out and distinctly claim the subject matter of the invention. In particular, the term “item” is used with respect to distinct elements, “an item of energy information that characterizes the energy content of the antenna,” “a preset item of energy information,” and “an item of comparison information that gives the distance at which the data carrier is situated from the base station.” Claim 18 has been canceled. Accordingly, Applicants respectfully request that the rejection of claims 1 and 7 under 35 U.S.C. 112, second paragraph, be withdrawn.

### Claim Rejections under Double Patenting

Claims 18 – 23 were rejected under statutory double patenting. Specifically, the Office Action states that claims 18 – 23 are substantial duplicates of claims 1 – 6. Claims 18 – 23 have been canceled.

### Claim Rejections under 35 U.S.C. 103

Claims 1 – 12 and 17 – 23 were rejected under 35 U.S.C. 103(a) as being unpatentable over Roz (U.S. Pat. No. 6,462,647) in view of Arakawa et al. (U.S. Pat. No.

7,283,810, hereinafter Arakawa). However, Applicants respectfully submit that the pending claims are patentable over Roz in view of Arakawa for the reasons provided below.

#### Claim 1

Applicants have amended claim 1 to incorporate the limitations of dependent claim 4 and to particularly point out that the ratio of the duration of the load period to the duration of the succeeding off-load period is modified such that the sum of the duration of the load period and the duration of the off-load period is kept constant and equal to the length of one cycle of the subcarrier signal. Support for the amendment to claim 1 is found in Applicants' specification at, for example, paragraphs [0021] and [0046] (U.S. Pub. No. 2007/0149161 A1). As amended, claim 1 recites:

“A data carrier for contactless communication with a base station by means of an electromagnetic field generated by the base station, having an antenna coil connected to a first coil terminal and to a second coil terminal, in which antenna coil an antenna signal can be induced in operation by the electromagnetic field, and having modulation means for modulating the electromagnetic field, during successive load periods and off-load periods, with transmission data to be communicated to the base station, the electromagnetic field being load-modulated during the load periods by modifying the value of the impedance of a modulation load that is connected at least indirectly to the first coil terminal and the second coil terminal, and having detection means for detecting an item of energy information that characterizes the energy content of the antenna signal, and having comparator means for comparing the detected item of energy information that characterizes the energy content of the antenna signal with a preset item of energy information and for emitting an item of comparison information that gives the distance at which the data carrier is situated from the base station and having modification means for modifying the ratio of the duration of the load period to the duration of the succeeding off-load period as a function of the item of comparison information that gives the distance at which the data carrier is situated from the base station;

wherein the modulation means are designed to modulate the electromagnetic field with a subcarrier signal, the sum of the duration of the load period and the duration of the succeeding off-load period corresponding to the length of one cycle of the subcarrier signal and wherein the ratio of the duration of the load period to the duration of the succeeding off-load period is modified such that the sum of the duration of the load period and the duration of the off-load period is kept constant and equal to the length of one cycle of the subcarrier signal.” (emphasis added)

Applicants express appreciation to the Examiner for allowing Applicants a telephonic interview on October 20, 2010, to discuss the claims of the present

application. In particular, Applicants discussed the amendment to claim 1. Agreement was reached that the amendment overcomes the current rejection at least because Arakawa does not teach the limitation of “wherein the ratio of the duration of the load period to the duration of the succeeding off-load period is modified such that the sum of the duration of the load period and the duration of the off-load period is kept constant and equal to the length of one cycle of the subcarrier signal.” Applicants pointed out that, with reference to Fig. 23(d), Arakawa teaches an activation period, T, that changes as a function of the location of the work machine. In contrast, amended claim recites a ratio that is modified without changing the period (length of one cycle) of the subcarrier signal. For at least this reason, Applicants assert that amended claim 1 is not obvious from Roz in view of Arakawa.

#### Independent Claim 7

Independent claim 7 has been amended to include similar limitations to claim 1. Although the language of claim 7 differs from the language of claim 1 and the scope of claim 7 should be interpreted independently of claim 1, Applicants respectfully assert that the remarks provided above in regard to claim 1 apply also to claim 7.

#### Dependent Claims 2, 3, 5, 6, 8, 9, 11, 12, and 17

Claims 2, 3, 5, 6, and 17 depend from claim 1 and claims 8, 9, 11, and 12 depend from claim 7. Applicants respectfully assert that the dependent claims are allowable at least based on allowable base claims. Additionally, each of these claims may be allowable for further reasons.

### **CONCLUSION**

Generally, in this amendment and response, Applicants have not raised all possible grounds for (a) traversing the rejections of the Action or (b) patentably distinguishing any new claims (i.e., over the Cited References or otherwise). Applicants however, reserve the right to explicate and expand on any ground already raised and/or to raise other grounds for traversing and/or for distinguishing, including, without limitation,

by explaining and/or distinguishing the subject matter of the application and/or any cited reference at a later time (e.g., in the event that this application does not proceed to issue with the claims as herein amended, or in the context of a continuing application).

Applicants submit that nothing herein is, or should be deemed to be, a disclaimer of any rights, acquiescence in any rejection, or a waiver of any arguments that might have been raised but were not raised herein, or otherwise in the prosecution of this Application, whether as to the original claims or as to any of the new claims, or otherwise. Without limiting the generality of the foregoing, Applicants reserve the right to reintroduce one or more of the original claims in original form or otherwise so as to claim the subject matter of those claims, both/either at a later time in prosecuting this Application or in the context of a continuing application.

Applicants respectfully request reconsideration of the claims in view of the amended claims and the remarks made herein. A notice of allowance is earnestly solicited.

At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account **50-4019** pursuant to 37 C.F.R. 1.25. Additionally, please charge any fees to Deposit Account **50-4019** under 37 C.F.R. 1.16, 1.17, 1.19, 1.20 and 1.21.

Respectfully submitted,

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